



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/145081

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 29, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's Family Care Program participation was correctly discontinued for failing to pay her cost share.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Chris Sobczak
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a Notice of Decision dated October 22, 2012 that informed her that her Family Care benefits were to be discontinued effective December 1, 2012. The reason for the discontinuance

was that Petitioner was not paying her cost share [more precisely a spenddown as explained in the Discussion below]. She timely appealed.

3. Petitioner filed appeal on November 29, 2011 to contest determination of the amount of her Family Care Program cost share for the months of October, November and December 2011. See DHA case number FCP/137084. That decision (issued March 5, 2012) concluded that a cost share of \$2506.65 was correct for the month of November 2011 and \$2509.65 for December 2011. (It also concluded that the cost share of \$2506.65 for October 2011 was correct but that Petitioner had not been given proper notice of the amount.) That obligation has changed somewhat over 2012 but has remained at approximately the same amount as determined in that March 2012 Division of Hearings and Appeals decision. Petitioner did not seek a rehearing nor file an appeal with the Circuit Court.
4. Petitioner has only partially paid her cost share since January 2012. The agency's records show that as of the October 22, 2012 Notice of Decision, Petitioner was in arrears \$3853.34. By the time of the hearing Petitioner's arrearage had increased to \$11,443.29.
5. Petitioner is a group 'C' FCP participant. The Division of Hearings and Appeals decision for case # 137084 noted Petitioner's total income to be \$3118.21. As of late 2012 it had increased slightly to \$3190.32 due to minor cost of living increases not in the record here.

DISCUSSION

People eligible for Family Care Medicaid fall into one of the following categories:

Group A eligibility

1. People 18 and over who meet full benefit EBD Medicaid financial and non-financial requirements and who are also functionally eligible for FC at either the nursing home or non-nursing home level of care.
2. People 18 and over who meet BC+ Standard Plan, Well Woman Medicaid, Medicaid through Adoption Assistance or Foster Care financial and non-financial requirements and who are functionally eligible for FC at either the nursing home or non-nursing home level of care.

Group B eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is at or below the special income limit (See the Community Waivers Special Income Limit in 39.4.1)

Group C eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is above the special income limit (see the Community Waivers Special Income Limit in 39.4.1), but whose allowable monthly expenses are sufficient to reduce their income to the medically needy limit (See EBD Medically Needy Limits in 39.4.1.)

Medicaid Eligibility Handbook (MEH), §29.3.1.

The elderly, blind and disabled (EBD) financial income limit is \$591.67 and the Community Waivers Special Income Limit was \$2094.00 through the end of 2012 and went up to \$2130 effective January 1,

2013. *MEH, §39.4.1 and Operations Memo* 12-63; issued November 28, 2012. As Petitioner's gross income has been well above \$2094.00, it is apparent that she falls into the group C category of Family Care eligibility.

A Group C FCP participant person must meet a monthly spenddown to maintain FCP eligibility. *See MEH, §28.5.2*. Though the term 'cost share' has been used by the agency here, it is more precise to state that Petitioner must meet a monthly spenddown to maintain her FCP eligibility. Payment of that obligation is a condition of eligibility. *MEH, § 28.8.4*. Indeed, when an economic support agency is informed by a managed care organization that an enrollee has not met the cost share or spenddown obligation, the member will be disenrolled. *MEH, §29.5.2.4; also see §11.1*.

Here Petitioner does not believe her cost share/spenddown should be so high and that it is unaffordable. At the January 2012 hearing Petitioner questioned the inclusion of disability income as part of income counted for purposes of determining her cost share/spenddown. There is, however, no exclusion for that income. *MEH, §15.3*.

Further, there is no good cause for failing to pay a cost share/spenddown and the simple fact is that Petitioner has not been meeting her cost share/spenddown obligation. Thus the FCP is correct in taking action to terminate Petitioner's Family Care program participation.

CONCLUSIONS OF LAW

That the Family Care program correctly discontinued Petitioner's FCP participation for failing to pay her monthly spenddown.

Now therefore, it is

ORDERED

That this appeal is dismissed

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

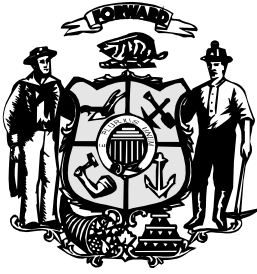
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of February, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 18, 2013.

Milwaukee Enrollment Services
Office of Family Care Expansion